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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.C.,

Defendant and Appellant.

E047170

(Super.Ct.No. J223542)

OPINION

APPEAL from the Superior Court of San Bernardino County.¹ Robin Miller

Sloan, Judge. Affirmed.

Sachi Wilson, under appointment by the Court of Appeal, for Defendant and
Appellant.

¹ On transfer for disposition from Los Angeles County Superior Court, it having been established that minor's legal residence was with his mother, a resident of San Bernardino County. Minor does not appeal from the disposition but only from orders and true findings made in the Los Angeles County Superior Court.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Arlene A. Sevidal, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant S.C. (the minor) appeals after the juvenile court sustained a petition charging him with the offenses of forcible rape and sexual battery. The minor contends that the lower court erred in permitting the complaining witness's parents to remain in the courtroom with her as support persons during her trial testimony. The minor further urges that the court prejudicially erred in failing to admonish the victim's parents pursuant to Penal Code section 868.5² while they acted as support persons to the witness. We affirm.

FACTS AND PROCEDURAL HISTORY

Before August of 2008, the minor and the victim, E.R., had been boyfriend and girlfriend. At the time of the offenses, the minor was age 17 and E.R. was age 15. The minor and E.R. had dated for several months, but had broken up about four weeks before the incident in question.

The minor left his home in San Bernardino and took the train to Los Angeles. In the early morning hours of August 18, 2008, the minor arrived at the victim's home and called her on her phone. The victim, who had been asleep, woke up and answered the phone. It was about 1:00 or 2:00 a.m. The minor told the victim, "I'm here." The victim denied inviting the minor to come over. The victim turned off the phone and

² All further statutory references are to the Penal Code unless otherwise indicated.

attempted to go back to sleep, but she saw something like a head outside her window. She surmised it was the minor, but she could not actually see him. The next thing she knew, the minor was inside her bedroom, sitting on her bed. The minor told her that he loved her; the victim told the minor that she had a boyfriend, not because it was true, but to induce the minor to leave her alone. The minor did not leave her alone, however, but got on top of her. He put his hands over her hands and pushed her down. The minor laid his body on top of her and forced her down. The minor began kissing the victim. The victim was crying and kept reminding the minor that she had a boyfriend, but he did not stop what he was doing.

The minor had come in the victim's bedroom window, which the victim had forgotten to lock. The minor continued to lie on top of the victim, pinning her down. He put his hand inside her shorts and touched her vagina. The victim squirmed away, telling the minor to stop.

The minor told the victim, "Okay, I will leave you alone if you do one thing," and started to pull down the victim's shorts. The minor pressed one of the victim's arms under his body weight, and pinned the other hand with his. With his remaining hand, the minor pulled down the victim's shorts. She cried and told the minor to leave her alone, but he called her by name and begged her, "Please," repeatedly. The minor got on top of the victim and began to have intercourse with her. The victim testified that she "was trying to get him off, like I kept squirming around, and he wouldn't get off as much as I tried to get out he would put his weight on me."

When the minor finished, he got off the victim. She was then able to get up, and told the minor to get out and that she hated him. The minor had never forced himself on the victim before; the victim said they had had sex once before, a few months previously. The minor left by the window through which he had come in.

At some point, the victim told her parents what had happened. She called the police to report the rape.

The minor had a different version of events. He testified that he and the victim had had sex numerous times—15 to 20 times. He had been to her house before and knew which window led to her bedroom. The minor and his friend had gone to the victim's house on the day of the incident, and sat talking with her in the front yard. At about midnight, the victim's parents called her to come inside; the victim told the minor to come back later. The minor went to another friend's house until about 1:00 or 2:00 a.m. The victim called the minor and asked him to come over again. The victim opened the window for the minor and he went inside. According to the minor, he and the victim kissed and talked for an hour, and then had sex for two minutes. The minor testified that the victim was "acting normal like other days," and did not tell the minor that she did not want to have sex with him until after they were already doing it.

The minor admitted, however, that he had told the police officer who interviewed him that the victim had previously told him that things were not working out between them, and the relationship had problems. The minor told the victim that he wanted to talk to her. The minor told police during his interview that the victim did not want him to take her shorts off. It had been more than a month since he had had sex with her. The

minor admitted pulling down the victim's pants, touching her vagina, and putting his penis inside her. The victim never told the minor that this was okay.

The minor's friend, Carlos Navarro, testified that he and the minor had been to the victim's house many times. He talked to the victim on the telephone on several occasions, and she discussed her relationship with the minor. Among other things, she had told Navarro that she and the minor had had sex on more than one occasion. She also told Navarro that she was afraid because of her parents: "She wanted to remove the charges, but her parents didn't want that and she was afraid."

After hearing all the testimony and the arguments of counsel, the juvenile court found true the allegations of the petition and adjudged the minor a ward of the court. The matter was transferred from Los Angeles County, where the offense took place, to San Bernardino County, where the minor's parent lived, for disposition. The San Bernardino juvenile court granted probation on stated terms and conditions.

The minor filed a timely notice of appeal.

ANALYSIS

I. The Court Did Not Err in Allowing the Victim's Parents to Remain in the Courtroom

The minor contends that the trial court abused its discretion in refusing to exclude the victim's parents from the courtroom while the victim was testifying. He claims that their presence, albeit as support persons, violated his right to present a complete defense, and his right to due process and confrontation of the witnesses against him.

Before the victim began her testimony, the prosecutor informed the court that the victim wanted her parents present during her testimony. The minor made no objection at that time to the parents' presence as support persons for the victim.

After direct examination, and before beginning cross-examination, the minor's counsel raised an objection: "Your Honor, I understand the young lady wants to have her parents in the room. The kids speak differently in front of their parents. At this point I will object to the [victim's] parents being in the courtroom. Their need to have their parents in the room does not outweigh my minor's right to a fair trial, and again I think the court knows that kids speak differently when their parents are in the room. At this point I will object to them being in the room." The court overruled the objection and permitted the parents to remain in the courtroom while the witness was testifying.

Defense counsel embarked on a line of questioning on the topic:

"Q Are you truthful with your parents? Do you and your parents ever talk about your sexual activity?

"A No.

"Q So that's things that you would not really want them to know, correct?

"A Yes.

"Q It's got to be a little awkward for you to be sitting here and talking about it?

"A Yes."

Counsel then renewed his objection to the parents' presence; the court again overruled the objection and allowed the parents to remain.

The parties agree that the appropriate standard of review is abuse of discretion, inasmuch as section 868.5 expressly provides for a court to exercise its discretion in deciding whether to remove a person from the courtroom, “whom it believes is prompting, swaying, or influencing the witness.” (§ 868.5, subd. (b).)

The minor contends that permitting the parents to remain in the courtroom impermissibly hampered his ability to present a complete defense. His defense was a reasonable belief in consent, a matter which turned on the credibility of the witnesses. The minor’s story was that he and the victim had had sex previously on numerous occasions, and that the victim’s conduct on the night in question was similar to her actions on the earlier occasions. The victim testified that she and the minor had had consensual sex only once in the past, and that she did not consent to sex on the night in question. The minor’s counsel elicited testimony that the victim found it difficult to talk about her sexual behavior in front of her parents, and then extrapolated that the victim was influenced to accuse the minor falsely.

The discretion conferred by the statute “is not a capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede or defeat the ends of substantial justice.” (*Baily v. Taaffe* (1866) 29 Cal. 422, 424.) A trial court’s discretion is limited by the legal principles governing the subject of its action and is subject “to reversal on appeal where no reasonable basis for the action is

shown.” (*Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 355.)

The court’s actions here comported with the spirit of the law. The reasons for the legislation are, “to allow the witness to more easily come forward and to reduce the psychological harm and trauma the witness might experience. [Citation.] The state’s interest in safeguarding the physical and psychological well-being of a minor or victim of sexual abuse can be a compelling one. [Citations.]” (*People v. Patten* (1992) 9 Cal.App.4th 1718, 1726.) The state’s compelling interest in protecting the psychological well-being of a minor or a victim of sexual assault must be balanced against considerations affecting the accused. “Opposing considerations . . . include (1) the potential of influencing the jury with a subconscious message that the victim is traumatized and therefore it is more likely the sexual assault occurred, and (2) the concern that the presence of a person supporting the witness may add credibility to the witness’s testimony—i.e., the support person is vouching for the credibility of the witness. (*Ibid.*)

This was a court trial, so there was no issue that the presence of the support persons could have any influence on a jury. Likewise, there was nothing in the record to indicate, e.g., where the victim-witness’s parents were located in the courtroom or whether they did or said anything during the proceedings so as to influence the victim’s testimony. True, the victim did agree that she felt awkward talking about her sexual conduct in front of her parents, but this shows nothing in particular. Any person could feel “awkward” or embarrassed in being required to discuss such intimate subjects in a

formal and somewhat public setting, such as a courtroom, regardless of the presence or absence of a support person or parent. The thrust of the minor's contention amounts to little more than an argument that the presence of a support person, if that person is the parent of a victim, is inherently prejudicial. That contention has been previously rejected. (*People v. Patten*, *supra*, 9 Cal.App.4th 1718, 1725, 1727; see also *People v. Ybarra* (2008) 166 Cal.App.4th 1069, 1076-1079; *People v. Johns* (1997) 56 Cal.App.4th 550, 553-556; *People v. Lord* (1994) 30 Cal.App.4th 1718, 1721-1722; *People v. Adams* (1993) 19 Cal.App.4th 412, 437-444.)

The key issue was consent on the occasion of the offenses. The minor testified that this occasion was like the others, and that he and the victim had had sex numerous times before.³ However, the minor also admitted during his police interview that the victim did not want him to take off her pants, that the victim had previously told him that their relationship was “not working out,” and that he had not had sex with the victim for several weeks or over a month. He admitted that she may have told him it was a “school night,” i.e., an indication that she did not want to stay up with him, that she eventually told him she had another boyfriend, and that at some point he noticed she was crying. He confirmed in his trial testimony that he was bigger and stronger than the victim. All these points tended to corroborate the victim's account, and were inconsistent with a belief that

³ Among other things, the minor testified that he did not completely disrobe whenever he had sex with the victim, and in particular, he always kept his shoes on, in case the victim's parents discovered them and he had to run away quickly.

the victim had invited him over and consented to sex on the night in question, regardless of how many times they may have had sex previously.

Although the minor urges that it was crucial for the victim to be able to speak freely about her sexual relationship with the minor, there is no evidence in the record that she was unable to do so, despite the awkwardness of the situation. The trial court did not abuse its discretion in permitting the parents to remain in the courtroom as the victim's support persons.

II. The Failure to Admonish the Support Persons Was Harmless

The minor next contends that the trial court erred in failing to give the parents the admonition, as required under section 868.5, subdivision (b), that they should not "prompt, sway, or influence the witness in any way."

Although the record does not affirmatively show whether the court so admonished the parents, the minor failed to object below. The error is therefore waived. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1124.) In any event, nothing in the record shows that the parents did or said anything which swayed or influenced the victim's testimony. The evidence of the minor's guilt was substantial, and he has failed to show any prejudice from the failure to give the admonition. Any error was harmless under any conceivable standard of review. (*Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 828, 17 L.Ed.2d 705]; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

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/s/ McKINSTER

Acting P. J.

We concur:

/s/ RICHLI

J.

/s/ MILLER

J.